Media & Entertainment - Taiwan

Liberalization a Step Closer as Broadcasting Reforms are Tabled

Contributed by **Shay & Partners**

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In response to Taiwan's recent accession to the World Trade Organization, industry pressure and the development of new technologies, the Government Information Office has drafted proposed amendments to the Radio and Television Broadcasting Law, which would combine this law with the Cable Radio and Television Broadcasting Law and the Satellite Radio and Television Broadcasting Law in one piece of legislation. The Government Information Office is reviewing the draft amendments prior to submission to the Executive Yuan. The draft amendments would introduce substantive changes, including:

- raising caps on foreign investment;
- relaxing anti-consortium limitations;
- allowing for more flexible cable broadcast pricing; and
- facilitating the convergence of the telecommunications and broadcasting industries.

Background

As in most countries, Taiwan's radio and television broadcasting systems began with terrestrial broadcasts. Due to poor reception in some areas, people began routing signals from community antennae through cables to areas with poor reception. This practice began in about 1968, and in response the government began issuing licences to and regulating those who operated such antennae.

In 1976 the government promulgated the Radio and Television Broadcasting Law in order to regulate the establishment of television and radio stations, the content of programmes and advertising, and related matters. Meanwhile, community antenna operators expanded their services, no longer simply retransmitting signals by cable, but also broadcasting domestic and foreign pre-recorded programmes. These alternative stations, which came to be known as 'fourth stations', were popular but violated existing law, so the government began closing them down and enacting cable television regulations. In 1982 the Broadcasting Law was amended to include cable broadcasts within its purview, and rules were enacted which required registration with the government before broadcasting any pre-recorded cable television programme.

It was not until 1993, however, that the government enacted the Cable Radio and Television Broadcasting Law, dividing Taiwan into 51 cable districts and providing for the issuance of permits to qualified cable broadcasters. In addition to the installation of facilities and issuance of permits, the law regulates programmes, advertising, subscription fees and foreign ownership. The Satellite Radio and Television Law, enacted in 1999, governs similar areas with regard to satellite broadcasts.

In order to liberalize Taiwan's cable and broadcasting industries, and allow for greater technological development, Taiwan's authorities have been under pressure to amend the laws to provide for:

- increased foreign ownership of cable providers;
- less stringent limitations on multiple system providers;
- less oppressive caps on rates; and
- more flexibility in price-setting.

Some feel the proposed amendments would help accomplish those goals, hastening the development of digital broadcasting and the convergence of the cable and telecommunications industries; others fear they would only allow the existing conglomerates to control the market further and stifle development.

Scope of Draft Amendments

Since the draft amendments would have the effect of merging the Cable Broadcasting Law and the Satellite Broadcasting Law with the Broadcasting Law, the amendments would apply to all terrestrial broadcasters, cable broadcasters, satellite broadcasters and channel providers.

Foreign Investment Limitations

One of the key changes which the draft amendments would effect is to raise the limitations on foreign ownership of broadcasting entities, particularly cable broadcasters. For cable broadcasters, direct foreign investment may not exceed 20% of a company's shares, and combined direct and indirect foreign investment may not exceed 60%. Under the amendments the limit on direct shareholdings would be raised to 49%, and the cap on direct and indirect investment would become subject to exception if otherwise provided by treaty. The amendments would not alter the requirement that the chairperson and two-thirds of the directors and supervisors of a cable broadcaster must be citizens of Taiwan.

For satellite broadcasters, the 50% limit on direct foreign ownership would become subject to exception if otherwise provided by treaty. At present, no limitations are imposed on satellite broadcasters regarding the nationality of the directors, supervisors or chairperson, and this would not change. Neither would the amendments alter the prohibition against foreigners investing in, or serving as directors or supervisors of, terrestrial broadcasters.

Anti-consortium Limitations

Taiwan is divided into 51 cable broadcasting administrative districts.

Increasingly, individual cable system operators are owned and controlled by multiple system operators (MSOs): primarily China Network Systems, Eastern Multimedia and Taiwan Broadband Communications, which together account for 45% of all cable system operators in Taiwan.

Article 21 of the Cable Broadcasting Law seeks to prohibit limited numbers of consortiums or MSOs from dominating the entire Taiwan market or any one district by providing as follows. With regard to any cable provider, together with its affiliates and directly or indirectly controlled operators:

- the number of subscribers of that entity may not exceed one-third of all subscribers in Taiwan;
- the number of that entity's cable providers in a district may not exceed one-half of all cable providers in the district (unless the district has only one cable provider); and
- the number of that entity's cable providers in Taiwan may not exceed one-third of all cable providers in Taiwan.

While the existing Article 21 may have been based on good intentions, it has not worked. Cable providers have for the most part complied with the first and third points above, but not with the second. In a large percentage of Taiwan's cable districts, all of the cable providers are controlled by one or two entities. Thus, the draft amendments would delete the limitation stated in the second and third points above, and change the ratio from one-third to one-fourth. While many see this proposed change as a mere reflection of reality, others describe it more cynically as facilitating greater domination of the industry by fewer participants.

Fee Pricing

If passed, the draft amendments would alter the law regarding cable subscription fees. Presently, the Cable Broadcasting Law allows providers to offer three separate tiers of service - such as basic service, pay channel, and pay per view - but it fails to authorize separate tiers of pricing. Article 51 of the draft amendments would now authorize providers to charge separate rates according to the service provided. Many feel that such a multi-tiered price structure, coupled with low-cost digital set-top boxes, is essential to the further development of high-speed internet access, as well as digital video broadcasts, video conferencing, e-shopping and other forms of interactive television.

Telecommunications Broadcasters

The Government Information Office and Ministry of Transportation and Communications are in disagreement over whether a licensed telecommunications operator that wishes to provide programmes over its broadband network is required to obtain an additional licence. The Government Information Office says such a licence is required, while the ministry says it is not. The draft amendments would resolve this uncertainty by requiring any entity that provides broadcasting services by way of telecommunications facilities, the Internet or other non-traditional broadcasting facilities to obtain a separate operation licence from the Government Information Office before providing such services. While this provision should bring some relief to cable broadcasters who worry about Taiwan's large telecommunications companies offering web-based television exempt from regulation, these broadcasters would still be exempt from cable regulations that govern matters such as pricing, foreign investment and term of licensing.

Comment

The fact that the Government Information Office is considering these draft amendments - which would relax foreign ownership restrictions, allow for multi-tiered cable fee structures and require telecommunications broadcasters to obtain proper licensing - is evidence that it understands that legal changes are necessary to facilitate the development of digital broadcasting and the convergence of the telecommunications and cable broadcasting industries. However, it remains to be seen whether the Executive Yuan is ready to make those changes.

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